

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL T. SPEER
Claimant

VS.

CESSNA AIRCRAFT COMPANY
Respondent
Self-Insured

)
)
)
)
)
)
)

Docket No. 234,161

ORDER

Respondent appeals from the Award of Administrative Law Judge Nelsonna Potts Barnes dated December 18, 1998. The Administrative Law Judge granted claimant a 23 percent functional impairment to the left hand, finding that claimant's accidental injury did arise out of and in the course of his employment with respondent on May 12, 1998.

APPEARANCES

Claimant appeared by his attorney, Tom E. Hammond of Wichita, Kansas. Respondent, a self-insured, appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations set forth in the Award of the Administrative Law Judge are adopted by the Appeals Board.

ISSUES

- (1) Did claimant's accidental injury arise out of his employment with respondent on the date alleged?
- (2) Is claimant entitled to temporary total disability compensation for the period May 12, 1998, through June 6, 1998?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant suffered accidental injury on May 12, 1998, while hurrying through respondent's parking lot in Wichita, Kansas. Claimant's left hand struck a hook on the side of a pickup in the parking lot, causing damage to his left ring and middle fingers. The

damage was extensive, resulting in amputation of claimant's middle finger and a significant injury to claimant's ring finger on his left hand. The parties have stipulated into evidence the report of Dr. Pedro Murati dated August 6, 1998, which gives claimant a 23 percent impairment to the left hand.

The accident occurred as claimant was leaving employment after his shift on May 12, 1998. Claimant did not return to work until June 6, 1998. Claimant alleges entitlement to temporary total disability compensation between May 12, 1998, and his return to work.

Respondent contends claimant's injury is not compensable as claimant was hurrying through the parking lot in order to avoid traffic problems. Respondent began construction in the parking lot in February 1998, which significantly restricted the employees' ability to leave the parking lot after their shift. If claimant hurried to his car, he could exit the parking lot in approximately 10 minutes. If, however, he was caught in the traffic jam, it would take between 45 minutes and an hour to leave the parking lot. This caused claimant concern as he was obligated to pick up his young children from school, and did not want to be delayed in the parking lot. Respondent argued that the risk in this case is a personal risk to the employee, that being picking up his children on time, and for that reason benefits should be denied. Respondent stipulates that claimant's injury occurred "in the course of" his employment, but argues that claimant has failed to prove an accidental injury arising "out of" the employment.

In proceedings under the Workers Compensation Act, the burden of proof is on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1997 Supp. 44-508(g) and K.S.A. 1996 Supp. 44-501.

In order for a claimant to collect workers' compensation benefits under the Workers Compensation Act, he or she must suffer accidental injury arising out of and in the course of his or her employment with respondent. K.S.A. 1996 Supp. 44-501.

As respondent has stipulated that claimant's accident occurred in the course of employment, the only issue to be decided is whether claimant suffered accidental injury arising out of his employment.

The phrase "out of" the employment points to the cause or the origin of the accident, and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

It is undisputed that, at the time of claimant's accident, he had clocked out, was not being paid, and was in the process of leaving his work. It was, however, stipulated by the parties that, at the time of claimant's accident, he was still on respondent's premises.

K.S.A. 1997 Supp. 44-508(f) states:

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.

K.S.A. 1997 Supp. 44-508(f), the "going and coming rule", excludes compensation if the employee is on his or her way to or from work. However, the "premises" rule creates an exception to the "going and coming rule" when the employee is on the employer's premises, even if the employee is on his or her way to or from work. Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994).

In Thompson, the Court analyzed the Court of Appeals' construction of the term "premises":

"... Kansas narrowly construes the term 'premises' to be a place controlled by the employer or a place where an employee may reasonably be during the time he or she is doing what a person so employed may reasonably do during or while the employment is in progress." Id. at 39.

The claimant in Thompson was furnished a parking place in a public parking garage, across a public street from the office building in which she worked. After leaving the public garage and walking across the public street to the office building and entering an elevator, claimant then proceeded to the eighth floor. As she was exiting the elevator on the eighth floor, claimant slipped and fell, suffering injury. It was found in Thompson that the elevator and the hallway in which claimant was injured were not part of the respondent's premises as they were not owned, controlled or maintained by the respondent. The Supreme Court found that Thompson was in route to work when the injury occurred and, therefore, not on respondent's "premises."

Here, however, the situation is different. The parties have stipulated that the parking lot in which claimant was injured was part of respondent's "premises." Respondent's defense to this action is not the location of the accident, but claimant's reason for

proceeding through the parking lot at a fast pace. However, neither statute nor case law would deny benefits to an employee injured while hurrying across respondent's parking lot in order to avoid a traffic jam generated by a respondent's own construction project. The accident occurred while he was still on respondent's premises and arose "out of" the claimant's employment with respondent.

Claimant also argues entitlement to temporary total disability compensation for the period from May 12, 1998, through his return to work on June 6, 1998. This issue, while presented to the Administrative Law Judge, was not decided. However, as it was raised before the Administrative Law Judge and also to the Appeals Board, it will be considered.

Claimant acknowledges his injury occurred at the end of his shift on May 12, 1998. He would, therefore, not be entitled to temporary benefits on that date. Claimant's testimony is uncontroverted that he was off work as a result of this injury from May 13, 1998, until he was allowed to return to work on June 6, 1998, a period of 3.43 weeks. As it is uncontradicted that claimant was off during this period as a result of this injury, the Appeals Board finds claimant is entitled to temporary total disability benefits beginning May 13, 1998, and continuing through June 5, 1998, at the maximum rate of \$351 per week. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated December 18, 1998, should be, and is hereby, modified, and claimant is granted an award of 3.43 weeks temporary total disability compensation, followed by a 23 percent permanent partial impairment to the left hand, for the injuries suffered on May 12, 1998.

Claimant is entitled to 3.43 weeks of temporary total disability compensation at the agreed rate of \$351 per week in the amount of \$1,203.93, followed by 33.71 weeks of permanent partial disability compensation at the rate of \$351 per week in the amount of \$11,832.21, for a total award of \$13,036.14, all of which is due and owing and ordered paid in one lump sum minus any amounts previously paid.

Claimant is entitled to unauthorized medical up to the statutory maximum upon presentation of an itemized statement verifying same.

Medical benefits reasonably necessary to cure and relieve the employee from the effects of the injury are ordered paid pursuant to the agreement of the parties.

Future medical benefits will be awarded upon proper application to and approval by the Director of Workers Compensation.

Claimant's attorney fee contract is approved insofar as it does not contravene the provisions of the applicable version of K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Ireland Court Reporting, Inc.	
Transcript of preliminary hearing	\$139.20
Barber & Associates	
Transcript of regular hearing	\$ 84.60

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Tom E. Hammond, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director